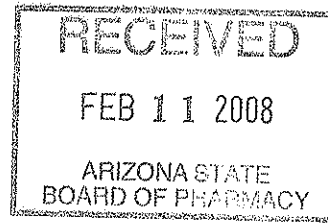


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8  
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **DAVID MARTINEZ**

12 Holder of License No. 15190  
For the Practice of Pharmacy  
13 In the State of Arizona

Board Case No. 08-0020-PHR

**CONSENT AGREEMENT  
AND ORDER FOR SUSPENSION  
AND PROBATION**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. §§ 32-1901, *et. seq.*, David Martinez  
19 ("Respondent"), holder of Pharmacist License Number 15190 in the State of Arizona, and  
20 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and  
21 Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
25  
26

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3442 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     All admissions made by the Respondent in this Consent Agreement are  
24 made solely for the final disposition of this matter, and any related administrative  
25 proceedings or civil litigation involving the Board and Respondent. Therefore, any  
26

1 admissions made by Respondent in this Consent Agreement are not intended for any  
2 other use, such as in the context of another regulatory agency's proceedings, or civil or  
3 criminal proceedings, whether in the State of Arizona or in any other state or federal  
4 court.

5 9. Respondent acknowledges and agrees that, upon signing this Consent  
6 Agreement and returning this document to the Board's Executive Director, he may not  
7 revoke his acceptance of the Consent Agreement or make any modifications to the  
8 document regardless of whether the Consent Agreement has been signed by the  
9 Executive Director. Any modification to this original document is ineffective and void  
10 unless mutually agreed by the parties in writing.

11 10. Respondent understands that the Consent Agreement shall not become  
12 effective unless and until adopted by the Board and signed by its Executive Director.

13 11. If a court of competent jurisdiction rules that any part of this Consent  
14 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
15 shall remain in full force and effect.

16 12. Respondent understands and agrees that if the Board does not adopt this  
17 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

19 13. Respondent understands that this Consent Agreement is a public record that  
20 may be publicly disseminated as a formal action of the Board and may be reported as  
21 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
22 Protection Data Bank.

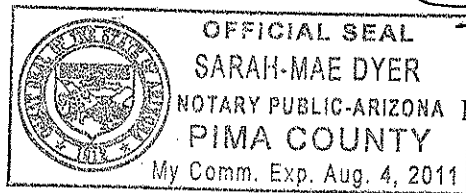
23 14. Respondent understands that any violation of this Consent Agreement  
24 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
25 1901.01(B)(20), -1927(A)(1).

1 ACCEPTED AND AGREED BY RESPONDENT

2 DJ Martinez  
3 David Martinez

Dated: 2.7.08

4 Subscribed and sworn to before me in the County of Pima, State of Arizona,  
5 this 7<sup>th</sup> day of February, 2008, by David Martinez.



[Signature]  
NOTARY PUBLIC

My Commission expires: 08.04.2011

10 **FINDINGS OF FACT**

11 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted  
12 authority for licensing and regulating the practice of pharmacy in the State of Arizona.

13 2. David Martinez ("Respondent") is the holder of license number 15190 to  
14 practice as a pharmacist in the State of Arizona.

15 3. During all times relevant to these Findings, Respondent worked as a  
16 pharmacist at CVS Pharmacy #8828 in Sierra Vista, Arizona (the "Pharmacy").

17 4. In September 2007, the Board received information from the Pharmacy that  
18 Respondent had diverted various CII medications and various strengths of  
19 Hydrocodone/APAP for his own personal use.

20 5. Respondent diverted the following controlled substances from the  
21 Pharmacy: (a) D-amphetamine 30mg; (b) oxycodone 15 mg; (c) oxycodone 30 mg; (d)  
22 hydrocodone APAP 10/500; and (e) hydrocodone APAP 10/325.

23 6. D-amphetamine is a Schedule II controlled substance. A.R.S. § 36-  
24 2513(A)(3)(a).

7. Oxycodone is a Schedule II controlled substance. A.R.S. § 36-2513(A)(1)(a)(xiv).

8. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-2514(A)(5)(d).

9. On September 4, 2007, Respondent entered in-patient drug treatment. On October 1, 2007, Respondent signed an agreement with Pharmacists Assisting Pharmacists of Arizona ("PAPA").

## CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*

2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist who has engaged in unprofessional conduct.

3. Respondent's practice and conduct, as described in the Findings of Fact, constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) ("Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.").

4. Respondent's practice and conduct, as described in the Findings of Fact, constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) ("Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A.").

5. Respondent's practice and conduct, as described in the Findings of Fact, constitutes unprofessional conduct, as such conduct constitutes a violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-

1 1921; (2) On a written prescription order bearing the prescribing medical practitioner's  
2 manual signature; (3) On an electronically transmitted prescription order containing the  
3 prescribing medical practitioner's electronic or digital signature that is reduced promptly  
4 to writing and filed by the pharmacist; (4) On a written prescription order generated from  
5 electronic media containing the prescribing medical practitioner's electronic or manual  
6 signature. A prescription order that contains only an electronic signature must be applied  
7 to paper that uses security features that will ensure the prescription order is not subject to  
8 any form of copying or alteration; (5) On an oral prescription order that is reduced  
9 promptly to writing and filed by the pharmacist; (6) By refilling any written,  
10 electronically transmitted or oral prescription order if a refill is authorized by the  
11 prescriber either in the original prescription order, by an electronically transmitted refill  
12 order that is documented promptly and filed by the pharmacist or by an oral refill order  
13 that is documented promptly and filed by the pharmacist.")

14         6.       The conduct and circumstances described in the Findings of Fact constitute  
15 a violation of A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire  
16 or obtain possession of a controlled substance by means of forgery, fraud, deception or  
17 subterfuge). A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony.

18         7.       A person commits theft if, without lawful authority, the person knowingly  
19 controls another person's property with the intent to deprive that other person of such  
20 property. A.R.S. § 13-1802(A)(1). Theft is a crime of moral turpitude. *State v. Superior*  
21 *Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978)  
22 (shoplifting involves moral turpitude and bears a close relationship to the common law  
23 crime of larceny).

24 ...

25 ...

1           8.     A person may not knowingly acquire or possess a prescription-only drug  
2 unless the person obtains the prescription-only drug pursuant to a valid prescription of a  
3 licensed prescriber. A.R.S. § 13-3406(A)(1). Furthermore, a person may not knowingly  
4 obtain or procure the administration of a prescription-only drug by fraud, deceit,  
5 misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal  
6 acquisition, possession or procurement of a prescription-only drug is a class 1  
7 misdemeanor. A.R.S. § 13-3406(B)(1). "The sale or dispensing or prescribing of  
8 narcotic drugs, except for medicinal use and under strict surveillance, [involves] moral  
9 turpitude." *Du Vall v. Board of Medical Examiners of Arizona*, 49 Ariz. 329, 337, 66  
10 P.2d 1026, 1030 (1939).

11           9.     The conduct and circumstances described above constitutes unprofessional  
12 conduct pursuant to A.R.S. § 32-1901.01(B)(8) ("Committing a felony, whether or not  
13 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-  
14 related offense. In either case, conviction by a court of competent jurisdiction or a plea  
15 of no contest is conclusive evidence of the commission.").

16           10.    The conduct and circumstances described above constitute unprofessional  
17 conduct pursuant to A.R.S. § 32-1901.01(B)(10) ("Violating a federal or state law or  
18 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
19 drugs, controlled substances or precursor chemicals when determined by the board or by  
20 conviction in a federal or state court.").

### 21                               ORDER

22           Based upon the above Findings of Fact and Conclusions of Law,

23           IT IS HEREBY ORDERED THAT Pharmacist License No. 15190, which was  
24 issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby  
25 placed on **SUSPENSION** for a period of not less than two (2) months but not more than  
26

1 eight (8) months. The period of suspension shall be determined by the Board after  
2 reviewing (a) information from PAPA regarding Respondent's compliance with the terms  
3 of the PAPA program/contract; (b) a progress report from Respondent's PAPA counselor,  
4 which may be submitted in writing to the Board; and (c) any input from Respondent.  
5 Thereafter, Respondent's license shall be placed on **PROBATION** for a period of at least  
6 four (4) years, but not more than four and one-half (4.5) years from the final date of  
7 suspension. Respondent's disciplinary period under the suspension and probation shall  
8 not exceed five (5) years, unless Respondent affirmatively fails to petition the Board to  
9 terminate the probation in accordance with paragraph 10 below.

10 The SUSPENSION and PROBATION are subject to the following conditions:

- 11 1. Respondent shall return his pharmacist license to the Board for the  
12 period of suspension.
- 13 2. Respondent signed a PAPA contract on October 1, 2007. Failure to  
14 abide by the PAPA contract's terms is a violation of this Order.
- 15 3. Respondent shall pay all necessary fees and complete all Continuing  
16 Education requirements throughout the term of his probation to maintain  
17 Pharmacist License No. 15190.
- 18 4. Respondent shall furnish all pharmacy employers with a copy of this  
19 Board Order throughout the term of his probation.
- 20 5. Respondent shall not serve as a preceptor pharmacist or pharmacist  
21 in charge throughout the term of his probation.
- 22 6. Respondent shall advise the Board immediately of any change in  
23 pharmacy employment status throughout the term of his probation.

7. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy along with the registration numbers of said licenses.

8. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

9. If Respondent violates this order in any way or fails to fulfill the requirements of this order, the Board, after giving the respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the Respondent's license. The issue at such a hearing will be limited solely to whether this order has been violated.

10. Respondent shall appear before the Board at a regularly scheduled Board meeting five years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED this 20<sup>th</sup> day of MARCH, 2008.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: Hal Wand  
HAL WAND, R.Ph.  
Executive Director

1 ORIGINAL OF THE FORGOING FILED  
2 this 20 day of March, 2008, with:

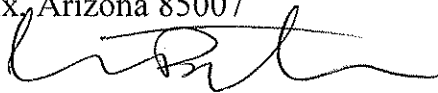
3 Arizona State Board of Pharmacy  
4 1700 West Washington, Suite 250  
5 Phoenix, Arizona 85007

6 EXECUTED COPY OF THE FOREGOING MAILED  
7 BY FIRST-CLASS and CERTIFIED MAIL  
8 this 20 day of March, 2008, to:

9 David Martinez  
10 8855 E. Bluefield Street  
11 Tucson, Arizona 85710

12 EXECUTED COPY OF THE FOREGOING MAILED  
13 this 20 day of March, 2008, to:

14 Elizabeth A. Campbell  
15 Assistant Attorney General  
16 1275 W. Washington Street, CIV/LES  
17 Phoenix, Arizona 85007



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